

ORIGINAL

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

Chapter 11

INSYS THERAPEUTICS, INC., et al.,

Case No. 19-11292 (KG)

Debtors.¹

Jointly Administered

INSYS THERAPEUTICS, INC., et al.,

Adv. Pro. No. 19-50261 (KG)

Plaintiffs,*Re: Doc. No. 2***-- against --**

STATE OF ARIZONA, *ex. rel.* Mark Brnovich,
Attorney General; STATE OF FLORIDA, Office of
the Attorney General, Department of Legal Affairs;
COMMONWEALTH OF KENTUCKY, *ex rel.*
Andy Beshear, Attorney General; *et al.*

Government Defendants.

**AGREED ORDER REGARDING ESTIMATION MOTION,
PI MOTION AND APPROVING CASE PROCEDURES**

Upon the representations of counsel to the Debtors, the Official Committee of Unsecured Creditors (“UCC”) and certain State Attorneys General, (the “**State AGs**” and, together with the Debtors and the UCC, the “**Parties**”) on the record at a hearing held July 2, 2019 (the “**Statements**”) in which the Debtors indicated that they would withdraw the *Motion of Debtors for (I) Entry of Orders Pursuant to 11 U.S.C. §§ 105(a) and 502(c) (A) Establishing Procedures and*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: Insys Therapeutics, Inc. (7886); IC Operations, LLC (9659); Insys Development Company, Inc. (3020); Insys Manufacturing, LLC (0789); Insys Pharma, Inc. (9410); IPSC, LLC (6577); and IPT 355, LLC (0155). The Debtors’ mailing address is 410 S. Benson Lane, Chandler, Arizona 85224.

Schedule for Estimation Proceedings and (B) Estimating Debtors' Aggregate Liability for Certain Categories of Claims, (II) Entry of Protective Order, and (III) Subordination of Certain Penalty Claims [Doc. 29]² (the “**Estimation Motion**”) and hold in abeyance the *Debtors' Motion for a Preliminary Injunction Pursuant to 11 U.S.C. § 105(a)* [Adv. Pro. Doc. 2] (the “**PI Motion**”), subject to entry of an order by the Court (i) approving and implementing certain case procedures, (ii) staying the Government Actions³ as to the Debtors (other than those Government Actions subject to a separate stipulation with the Debtors filed on the docket as of the date hereof), and (iii) granting such other and further relief as the Court deems just and proper; and the Court having jurisdiction to consider the relief requested pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and consideration of this matter and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and upon the record at the hearing; and the Court having determined that the legal and factual bases set forth at the hearing establish just cause for the relief granted herein; and it appearing that the relief requested is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

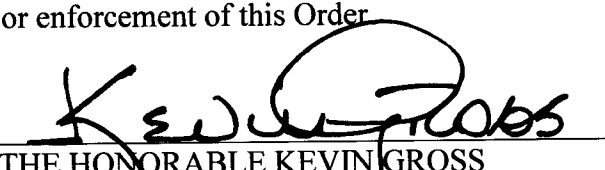
1. The protocol attached to this Order as **Exhibit A** (the “**Case Protocol**”) is approved.
2. The PI Motion is hereby abated in accordance with the terms set forth in the Case Protocol.

² References to “[Doc. __]” refer to the docket in the Chapter 11 Cases. References to “[Adv. Pro. Doc. __]” refer to the docket in the above-captioned Adversary Proceeding No. 19-50261 (KG) (the “**Adversary Proceeding**”).

³ The “Government Actions” are those actions set forth on Appendix A to the Complaint [Adv. Pro. Doc. 1] initiating the Adversary Proceeding.

3. The Estimation Motion is hereby withdrawn by the Debtors.
4. The Government Actions that are not otherwise the subject of a stipulation with the Debtors are stayed as to the Debtors in furtherance of and in accordance with the Case Protocol.
5. Nothing in this Order shall constitute an admission by any party that the Governmental Actions stayed hereunder are or are not subject to the automatic stay under 11 U.S.C. § 362 or that the Debtors are entitled to any injunctive relief pursuant to 11 U.S.C. § 105(a).
6. For the avoidance of doubt, nothing in this Order shall constitute a finding of fact or substantive ruling on the PI Motion or any other matter in the Chapter 11 Cases or the Adversary Proceeding and all parties' rights with respect to the foregoing are expressly preserved.
7. The Debtors are authorized to take all actions necessary to implement the relief granted in this Order.
8. The Parties will appear for a status conference regarding the Case Procedures on July 24, 2019 at 9:30 a.m. (prevailing Eastern time).
9. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order

Dated: July 2, 2019
Wilmington, Delaware



THE HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A**Insys Therapeutics: Multi-Pronged Case Protocol**

Set forth below is a multi-prong case protocol from the Official Committee of Unsecured Creditors (the "UCC"), the Debtors and the State AG Group (as defined below) with regard to various case items, including the *Motion of Debtors for (I) Entry of Orders Pursuant to 11 U.S.C. §§ 105(a) and 502(c) (A) Establishing Procedures and Schedule for Estimation Proceedings and (B) Estimating Debtors' Aggregate Liability for Certain Categories of Claims, (II) Entry of Protective Order, and (III) Subordination of Certain Claims* (the "Estimation Motion") and the Debtors' *Motion for a Preliminary injunction Pursuant to 11 U.S.C. § 105(a)* (the "PI Motion"). The Debtors and the State AG Group recognize that the UCC is a fiduciary to all unsecured creditors and a neutral party and can thus play an important role in working with the Debtors, and negotiating with other creditors, to determine the amount of claims in different categories, as described herein. The Debtors, the UCC, and the State AG Group recognize that a process that maximizes value by encouraging settlement and expedites a resolution of claims categories, the confirmation of a chapter 11 plan, and a distribution to creditors is in the best interest of the Debtors' estates and all creditors.

In lieu of the Debtors' current proposed schedule with regard to estimation and the PI Motion, the following shall occur:

Current Date thru July 23:

1. UCC will undertake investigation and analysis with regard to all unsecured claims against Debtors, including all litigation claims.
2. The Debtors and UCC, separately or together, as appropriate, will engage with professionals representing the State AG Group, the MDL Executive Committee,¹ and any other constituency suggested to them or that they can identify in their analysis.
3. Debtors will provide information and analysis regarding claims to professionals representing the UCC, the State AG Group, and the MDL Executive Committee (including, subject to the negotiation of a confidentiality agreement reasonably acceptable to the Debtors, all materials relied upon by Nathan and Associates in its estimation work, and a copy of the then-current draft Nathan and Associates report (at a time decided at the sole discretion of the Debtors) on professional-eyes only basis). The Debtors may, at their discretion, but upon consultation with the UCC, provide other claimants or groups of claimants with information related to their particular category of claims or other categories of claims, subject to an appropriate confidentiality agreement. None of the UCC, the State AG Group, the MDL Executive Committee, or any other party receiving information will share any information provided by the Debtors without consent.
4. Formal discovery will not be conducted, but State AG Group and the MDL Executive Committee will provide data supporting claims on an informal basis to the UCC and the Debtors.
5. The Debtors, the UCC, the State AG Group, and the MDL Executive Committee (each a "Party," and collectively, the "Parties") will consider views of every constituency with regard to every topic, including strength and weakness of claims, rights to specific estate value, timeline of case (including available cash), and any other issue deemed appropriate.

¹ For the avoidance of doubt, the MDL Executive Committee has not yet agreed to this Case Protocol.

6. To the extent reasonably practicable, Parties will encourage each unsecured creditor category to identify a small group or groups to be its representative(s) in this process, and when identified the small group or groups will become Parties under these procedures.
7. Parties can meet separately or as groups or in any other configuration to discuss and try to resolve any issues involved in the case, including claim amounts, allocation, plan issues, etc., at any time during this process.

July 23

1. UCC to meet with Debtors to provide its view with regard to proper allocation, by unsecured creditor category, of estate proceeds. Other Parties may meet and provide views as well.
2. It is currently contemplated that the categories will consist of, among others, the following: (1) DOJ; (2) Municipality Plaintiffs (as defined in the Estimation Motion); (3) State Attorneys General; (4) Insurance Carrier and Self-Funded Insurance Plan Plaintiffs; (5) Personal Injury Plaintiffs; (6) Trade creditors (including service providers); (7) Persons with Indemnification Claims; (8) Hospitals; and (9) Other (including purported class of purchasers of insurance). Categories are subject to change, including, without limitation, to adjust for types of claims, rather than where such claims are being litigated.
3. At the same time, to the extent not previously delivered, Debtors to provide to UCC their view of same.

July 24 Status Conference required under Agreed PI Order.

July 23-August 5

1. Debtors will negotiate with UCC and any other Party in the Debtors' discretion to reach an "agreed to" allocation, by unsecured creditor category, of estate proceeds (i.e percent allocation to each category).
2. It is anticipated that these negotiations will include agreeing to a mechanic/procedure to go forward with a plan of liquidation.
3. Topics will include: (1) Retention of estate causes of action; (2) Establishment of post-effective date trust or similar mechanic for all proceeds and causes of action/mini-trusts or some other structure to govern each creditor category; (3) Appropriate separation of unsecured creditors into voting classes; (4) Voting procedures; (5) Confidentiality/protective order relating to confirmation proceedings; (6) Timing of distributions; (7) Substantive Consolidation; (8) Appropriate earmarking (if any) of estate value; and (9) Potential subordination (if any) of claims.

*****Note: Subject to Entry of Bid Procedures Order, Auction to occur August 5, which will provide visibility on company cash/inform timing*****

August 6-August 20:

1. It is anticipated that prior to August 6, the Debtors will reach an agreed-to construct with, at the very least, the UCC.
2. Regardless of whether an agreed-to construct has been reached with the UCC, the Debtors to invite all Parties and other case constituents (subject to appropriate confidentiality restrictions)

to negotiations/"mediation" where the Debtors (and, to the extent an agreement has been reached, the UCC) will present their agreed-to construct.

3. The Debtors and the UCC will act as co-mediators, to negotiate proper allocation of estate value by unsecured creditor category, if parties dispute the construct that is presented.
4. These negotiations/mediation sessions will also include discussions regarding proper mechanic for implementing plan of liquidation and post-effective date trust(s).

August 21-August 30:

1. Based on results of negotiation/mediation, the Debtors, with the input of the construct proponents (and all other parties that reach agreement), will document plan of liquidation.

On or before September 2:

1. If not previously filed, Debtors will file Disclosure Statement/Plan of Liquidation, which may or may not include an agreement with any Party or Parties; provided, however, that nothing herein or otherwise, waives or affects the Debtors' right to exclusivity and right to seek extension of exclusivity.
2. If the Debtors file a non-consensual Plan, then any party that objected to the PI Motion on or before June 28, 2019 and did not resolve such objection through a stipulation or other voluntary agreement to stay may file with the Court a Notice of Scheduling Conference, which conference will be scheduled on at least 3 business days' notice, to set a hearing date on the PI Motion solely with respect to such noticing party.
3. If parties have an objection to Disclosure Statement/Plan of Liquidation, they may bring objections on any grounds other than (a) Expedited timing; and (b) Failure to estimate claims.

October 7 (approx): Disclosure Statement Hearing

November 12 (approx): Confirmation Hearing

November 22 (approx): Effective Date

*All timing may be accelerated with the agreement of the Debtors and the UCC.